

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

KENITE WEBB,

Plaintiff,

v.

Case No. 8:19-cv-3045-TPB-TGW

CITY OF VENICE,

Defendant.

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ORDER ADOPTING REPORT AND RECOMMENDATION IN PART

This matter is before the Court on consideration of the report and recommendation of Thomas G. Wilson, United States Magistrate Judge, entered on March 24, 2023, addressing various motions relating to Plaintiff's requests for attorney's fees and costs. (Doc. 187).¹ Judge Wilson recommends that some of the motions be granted or granted in part and others denied. Plaintiff filed an objection to the report and recommendation on April 7, 2023. (Doc. 189). Defendant filed an objection on April 10, 2023. (Doc. 190). Defendant filed a response to Plaintiff's objection on April 20, 2023. (Doc. 191). Plaintiff filed a response to Defendant's objection on May 1, 2023. (Doc. 193).

¹ The relevant motions are: "Plaintiff's Motion for Attorneys Fees and Costs" (Doc. 146); "Defendant's Motion in Opposition to Plaintiff's Bill of Costs" (Doc. 147); "Defendant's Motion to Strike Plaintiff's Motion for Attorney's Fees and Costs" (Doc. 148); "Plaintiff's Motion to Accept Plaintiff's Application for Attorneys' Fees and Costs as Timely Filed" (Doc. 151); "Plaintiff's Renewed Motion for Entitlement to Attorney's Fees and Costs" (Doc. 162); "Movant Kenite Webb's Supplemental Statement Pursuant to Middle District of Florida Local Rule 3.02(g)(3)" (filed as a motion) (Doc. 163); and "Defendant's Motion to Strike Plaintiff's Renewed Motion for Entitlement to Attorney's Fees and Costs" (Doc. 168).

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983); *Williams v. Wainwright*, 681 F.2d 732 (11th Cir. 1982). A district court must "make a de novo determination of those portions of the [report and recommendation] to which an objection is made." 28 U.S.C. § 636(b)(1)(C). When no objection is filed, a court reviews the report and recommendation for clear error. *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006); *Nettles v. Wainwright*, 677 F.2d 404, 409 (5th Cir. 1982).

Upon due consideration of the record, the Court adopts the report and recommendation, except with respect to the cost of the deposition transcript of Thomas Mattmuller, for which the Court awards a total of \$885.00 instead of the recommended \$405.00. The Court otherwise agrees with Judge Wilson's detailed and well-reasoned factual findings and legal conclusions.²

Accordingly, it is

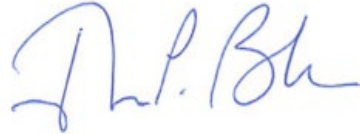
ORDERED, ADJUDGED, and DECREED:

² Judge Wilson reasoned that Plaintiff's renewed fee motion (Doc. 162) was timely under *Members First Fed. Credit Union v. Members First Credit Union of Fla.*, 244 F.3d 806 (11th Cir. 2001). The Court agrees and alternatively holds that Plaintiff's bill of costs (Doc. 145) can be considered a timely "motion" because it requested relief, specifically, an award of fees. As required by Fed. R. Civ. P. 54(d)(2) and Local Rule 7.01(b), the bill of costs identified the relevant judgment, indicated (in a supporting affidavit) that fees were being sought pursuant to Title VII, and set forth the amount of fees requested. The bill of costs did not include a memorandum, nor did it follow the bifurcated procedure required by Local Rule 7.01, but the Court in its discretion would excuse noncompliance with those requirements under the facts presented here. See *Fluor Intercontinental, Inc. v. IAP Worldwide Services, Inc.*, 533 F. App'x 912, 922 (11th Cir. 2013) (holding that district court has discretion to waive or excuse noncompliance with local rules).

- (1) Judge Wilson's report and recommendation (Doc. 187) is **ADOPTED IN PART.**
- (2) With respect to the cost of the deposition transcript of Thomas Mattmuller, Plaintiff is **AWARDED** \$885.00 rather than the recommended \$405.00.
- (3) Judge Wilson's report and recommendation (Doc. 187) is in all other respects **AFFIRMED** and **ADOPTED** and **INCORPORATED BY REFERENCE** into this Order for all purposes, including appellate review.
- (4) "Plaintiff's Motion for Attorneys Fees and Costs" (Doc. 146) is **DENIED.**
- (5) "Defendant's Motion in Opposition to Plaintiff's Bill of Costs" (Doc. 147) is **GRANTED IN PART.** Plaintiff is awarded taxable costs in the amount of \$4,146.50, and the Clerk is **DIRECTED** to enter judgment for costs in that amount in favor of Plaintiff Kenite Webb and against Defendant City of Venice.
- (6) "Defendant's Motion to Strike Plaintiff's Motion for Attorney's Fees and Costs" (Doc. 148) is **GRANTED.**
- (7) "Plaintiff's Motion to Accept Plaintiff's Application for Attorneys' Fees and Costs as Timely Filed" (Doc. 151) is **DENIED.**
- (8) "Movant Kenite Webb's Supplemental Statement Pursuant to Middle District of Florida Local Rule 3.02(g)(3)" (filed as a motion) (Doc. 163) is **DENIED AS MOOT.**
- (9) "Defendant's Motion to Strike Plaintiff's Renewed Motion for Entitlement to Attorney's Fees and Costs" (Doc. 168) is **DENIED.**

(10) “Plaintiff’s Renewed Motion for Entitlement to Attorney’s Fees and Costs” (Doc. 162) is **GRANTED IN PART** to the extent that Plaintiff is the prevailing party and entitled to recover his reasonable attorney’s fees and costs, which must be requested in a supplemental motion within 45 days of the date of this Order as required by Local Rule 7.01(c).

DONE and **ORDERED** in Chambers, in Tampa, Florida, this 10th day of July, 2023.



TOM BARBER
UNITED STATES DISTRICT JUDGE